

REMARKS

The Office Action dated October 6, 2003 has been carefully considered. By way of this amendment, claims 1, 9 and 17 have been amended. Claims 1-20 remain in the present application. Applicant respectfully requests reconsideration and reexamination in view of the foregoing amendments and the following remarks.

First, turning to the § 112 rejections, the Patent Examiner has asserted that claims 1-7 are non-enabling because the specification does not reasonably provide for enablement for a filter drum that does have an end wall. It is respectfully submitted that the Office Action has failed to establish the Patent Office's burden of proving lack of enablement. The Patent Examiner is relying the doctrine of claim differentiation for supporting an enablement rejection, which to Applicant's knowledge is not supported by any case law precedent or by any rule or regulation of the MPEP. If the Patent Examiner has a rule to cite, as it relates to this issue, Applicant respectfully requests that rule or section of the MPEP be cited. Apparently, the Patent Examiner asserts that the scope of claim 1 is commensurate with the scope of claim 8 because claim 1 would inherently require a drum that includes no end walls. Indeed, if it is the Patent Examiner's position that the drum of claim 1 must not include an end wall either explicitly or inherently, then the Patent Examiner would need to rely upon MPEP § 2164.08(c) in asserting that a critical feature is not claimed in claim 1. However, it is noted under this section that:

"limiting an Applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing from a claim should be made only when the language of the specification makes clear that the limitation is critical for the invention to function as intended. Broad language in the disclosure, including the abstract, omitting the allegedly critical feature, tends to rebut the argument of criticality."
MPEP § 2164.08(c) (emphasis added)

Accordingly, Applicant using claim differentiation in setting claim 8 apart from claim 1 evidences that the feature is not critical as it pertains to the broad invention. Claim differentiation defeats an enablement rejection and does not support it. Accordingly, Applicant respectfully requests the enablement rejection to be withdrawn.

Furthermore, the specification does not make the absence of the end wall critical. As it relates to claim 1, the specification indicates the drum body is journalled about its outer surface and thereby does not require end walls on the drum body (see ¶ 7). The specification

does not mention "criticality" or state that you must remove the end walls and it is critical that the end walls are removed. In fact, it would be a travesty to require such a narrow interpretation of claim 1 to say that there cannot be any end walls and then have a competitor in the industry come out and appropriate the subject invention and avoid infringement by installing an end wall. This is exactly what is to be avoided under MPEP § 2164.08(c). Accordingly, Applicant is soliciting the broadest protection it believes it is entitled to through the present claiming strategy which is explicitly permitted under MPEP § 2164.08(c).

With respect to the Patent Examiner's assertion that it is unclear what is intended by the recitation of "journalled" in the context used as recited in claim 1, Applicant encloses exemplary dictionary definitions for the word "journal". As noted by the fifth definition for the first entry, it is "the part of the machine shaft or axle supported by a bearing". In the context of claim 1, it is "the outer surface" of "the drum body" that is that part which is journalled to the reservoir for rotational purposes as is claimed. Applicant does not understand the basis for the rejection or why the word "journalled" is not clear. In view of the dictionary definitions and the context in which journalled is used in the present invention, in which journalled relates to rotational support, Applicant respectfully requests that this rejection be withdrawn. If the Patent Examiner is still unclear or concerned about Applicant's recitation set forth in the claim, Applicant would suggest a telephonic phone call to the undersigned attorney to see whether the issue cannot be clarified to the satisfaction of the Patent Examiner.

As a further preliminary matter, the Patent Examiner has asserted that it is unclear what Applicant intends when referring to "an opening" as recited in claims 1, 9 and 17. The Patent Examiner has noted that "opening" has been used in two different ways. In response, Applicant has amended claims 1, 9 and 17 to recite that the first and second ends have openings with a passageway therebetween to pass fluid which should clarify this and make explicit what was inherent in the claims as filed. Accordingly, with this clarification, Applicant respectfully requests this rejection to be withdrawn.

Regarding the issue of how the subject matter of claim 8 further limits claim 1, the Applicant would point to the above comments that claim 1 is intended to have broad meaning while claim 8 is more specific and defines a further preferred inventive aspect that the drum includes no end walls. Accordingly, Applicant respectfully requests this issue to be withdrawn. Applicant notes that apparently claim 8 is allowable over the prior art since no prior art has been asserted against claim 8. Applicant would like confirmation of the same from the Patent Examiner.

Finally, the Patent Examiner has rejected claims 1-14 as being incomplete for omitting essential elements such as omission amounting to a gap between elements under § 2172.01. Again, this section of the MPEP must be read in conjunction with § 2164.08(c) of the MPEP where it is clear that such an enablement rejection requires the limitation to be critical for the invention to function as intended. In the presently claimed invention, a fluidic seal is again only a preferred implementation. Nowhere does the claim recite perfectly filtering 100% of all of the fluid nor does it say it is 100% efficient in filtering fluid. Accordingly, in view of the context of the claimed invention and the functional features recited therein, there is no requirement to have the fluidic seal as part of the independent claims. Furthermore, the Office Action fails to identify any indication of criticality in the specification. Indeed, under MPEP § 2164.08(c), the rule sets forth that "limiting an Applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress of the useful art. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing of the claims should be made only when the language of the specification makes clear that the limitation is critical for the invention to function as intended." Here, there is no such criticality set forth in the specification and in fact, by virtue of using claim differentiation and installing the fluidic seal in a dependent claim, that itself "tends to rebut the argument of criticality" within the meaning of MPEP § 2164.08(c). Accordingly, Applicant respectfully requests this enablement rejection to be withdrawn.

Turning to the rejections on the prior art, the Patent Examiner has asserted that claims 1-2, 4-6, 9-10 and 13-14 are anticipated over Uchiyama. The rejection is respectfully traversed. In particular, the drum body of Uchiyama is disclosed as being journaled about its inner surface, not its outer surface. In particular, in column 2, lines 12-16, Uchiyama recites that the filtering drum 11 is journaled on cylindrical bearings 12. Referring to FIG. 2 of Uchiyama, the cylindrical bearings 12 are along the inside surface of the drum, not the outside surface of the drum. Accordingly, and in contrast to claim 1, Uchiyama teaches a drum body being journaled about its inner surface, not the outer surface as is claimed in claim 1. Accordingly, Applicant respectfully requests the anticipation rejection of claim 1 to be withdrawn.

Regarding claim 9, Uchiyama is also deficient in that it does not teach or suggest the claimed recitation of "the first and second ends of the drum body being adjustably supported by the side walls" and that "the first and second ends being independently adjustable". The Office Action does not indicate or specify where these limitations are found in Uchiyama. Such inventive features are described in the present application at for example paragraphs 25

and 26 and are not disclosed in Uchiyama. Accordingly, Applicant respectfully requests that the rejections of claim 9 be withdrawn for this reason and that the rejections of claim 10 be withdrawn for the additional reasons as it relates to the comments above with respect to claim 1.

For the foregoing reasons, and because the underlying independent claims are thought to be patentable over the prior art, it is believed that the rejections of claims 1-16 are obviated as well because it is not seen that the secondary references noted in the Office Action cure the deficiencies of Uchiyama.

Turning to claim 17, claim 17 was rejected as obvious over the combined teachings of Uchiyama and Moore. The Patent Examiner asserts that Moore cures the deficiencies of Uchiyama by including a seal. However, claim 17 recites that the bearings support the drum body "about an outer surface of the drum body" which is not disclosed or taught by Uchiyama as discussed above and which is not seen to be cured by Moore. Furthermore, the seal is recited as being mounted to the outer surface of the drum body and engaging the pair of side walls to provide a fluidic seal therebetween. Such a mounting to the outer surface of the drum of Uchiyama would have no effect because the filter drum is not journaled about its outer surface, but an inner surface. Accordingly, for the reasons set forth with respect to claim 1 discussed above and for the additional reasons set forth herein, Applicant respectfully requests that the obviousness rejections over claim 17 and the dependents thereof be withdrawn.

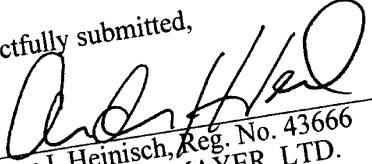
In view of the foregoing, Applicant respectfully requests that all rejections be withdrawn and that a Notice of Allowance be forthcoming. It is believed that the differences between the claimed invention and the prior art are clear. If the Patent Examiner still has questions as it relates to clarification of claim terminology as indicated above particularly as it relates to the journaled claim term, Applicant would suggest a telephonic interview initiated by the Patent Examiner could serve as a springboard to move the patent application along to a Notice of Allowance.

In re Appln. of Thomas W. Lenhart
Application No. 09/904,738

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

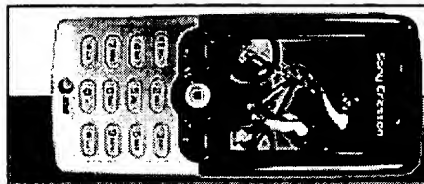

Andrew J. Heinisch, Reg. No. 43666
LEYDIG, VOIT & MAYER, LTD.
6815 Weaver Road, Suite 300
Rockford, Illinois 61114-8018
(815) 963-7661 (telephone)
(815) 963-7664 (facsimile)

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jour·nal **Pronunciation Key** (jûr' nəl)
n.

- a. A personal record of occurrences, experiences, and reflections kept on a regular basis; a diary.
- b. An official record of daily proceedings, as of a legislative body.
- c. *Nautical.* A ship's log.
2. *Accounting.*
 - a. A daybook.
 - b. A book of original entry in a double-entry system, listing all transactions and indicating the accounts to which they belong.
3. A newspaper.
4. A periodical presenting articles on a particular subject: *a medical journal.*
5. The part of a machine shaft or axle supported by a bearing.

[Middle English, *breviary*, from Old French, *daily*, *breviary*, from Late Latin *diurnālis*, *daily*. See **diurnal**.]

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journal

\Jour"nal\, a. [F., fr. L. diurnalis diurnal, fr. diurnus belonging to the day, fr. dies day. See Diurnal.] Daily; diurnal. [Obs.]

Whiles from their journal labors they did rest. --Spenser.

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\Jour"nal\, n. [F. journal. See Journal, a.] 1. A diary; an account of daily transactions and events. Specifically: (a) (Bookkeeping) A book of accounts, in which is entered a condensed and grouped statement of the daily transactions. (b) (Naut.) A daily register of the ship's course and distance, the winds, weather, incidents of the voyage, etc. (c) (Legislature) The record of daily proceedings, kept by the clerk. (d) A newspaper published daily; by extension, a weekly newspaper or any periodical publication, giving an account of passing events, the proceedings and memoirs of societies, etc.; a periodical; a magazine.

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journal

n 1: a daily written record of (usually personal) experiences and observations [syn: diary] 2: a periodical dedicated to a particular subject; "he reads the medical journals" 3: a ledger in which transactions have been recorded as they occurred [syn: daybook] 4: a record book as a physical object 5: the part of the axle contained by a bearing

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